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WINZLER & KELLY

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KFD ENTERPRISES, INC., a California
Corporation dba Norman's Dry Cleaner,

Plaintiff,

vs.

CITY OF EUREKA, et al.

Defendant.

AND RELATED COUNTERCLAIMS AND
THIRD PARTY CLAIMS.

Case No.: 3:08-cv-04571-MMC

**STIPULATION AND PROPOSED ORDER
FOR THIRD PARTY DEFENDANT
WINZLER & KELLY FILING A
RESPONSE TO THE CITY OF EUREKA'S
THIRD AMENDED COUNTERCLAIM
AND CROSSCLAIM**

AND ORDER APPROVING STIPULATION

Third-Party Defendant Winzler & Kelly ('Winzler & Kelly') and Third Party Plaintiff, The

City of Eureka ('Eureka') hereby stipulate as follows:

Whereas both Winzler & Kelly and defendant Environmental Resolutions, Inc. ('ERI') have similar interests in this litigation to the extent that both are alleged to have installed monitoring wells that have contributed to the environmental conditions at the 2907 E Street Property ('Property'), which is the subject of this litigation;

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Whereas on May 27, 2010 ERI filed a Motion to Dismiss multiple claims within various pleadings (herein, the ‘ERI Motion’), including claims within the Third Amended Counterclaim and Crossclaim (‘TACC’) of Eureka, which ERI Motion is scheduled for hearing on July 16, 2010;

Whereas both Winzler & Kelly and Eureka believe that the Court's ruling on said ERI Motion will provide some guidance with respect to the viability of Eureka's claims against Winzler & Kelly as set forth in Eureka's TACC, and wish to effectuate a standstill with regard to their rights until after they can review the Court's ruling on the pending ERI Motion;

Whereas both Winzler & Kelly and Eureka believe that this stipulation will avoid redundancy of briefing on matters already before the Court with respect to Eureka's TACC, thereby conserving judicial and party resources.

Therefore, Winzler & Kelly and City of Eureka hereby stipulate to the following:

(1) Following the Court's ruling on ERI's Motion, which is set to be heard July 16, 2010, Winzler & Kelly will have up to 21 days to respond to either Eureka's TACC, or to a Fourth Amended Counterclaim and Cross-claim by Eureka if one is permitted by the Court;

(2) Both Eureka and Winzler & Kelly will retain their rights to challenge and respond to each other with respect to the TACC or to any subsequent amendments thereto as allowed by the Court's ruling on the pending ERI Motion.

DATED: June 3, 2010

SEVERSON & WERSON
A Professional Corporation

By: /s/ Peter C. Lyon
PETER C. LYON

Attorneys for Third Party Defendant
WINZLER & KELLY

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1 I, Peter C. Lyon, am the user whose identification and password are being used to file this
2 stipulation. I hereby attest that Charles Bolcom, the other signatory below, has concurred in the
3 filing of this document.

4 _____
5 */s/ Peter C. Lyon*
6 PETER C. LYON

7 DATED: June 3, 2010 DAVIDOVITZ & BENNETT LLP

8 By: _____
9 */s/ Charles Bolcom*
10 MORIS DAVISOVITZ
CHARLES BOLCOM

11 Attorneys for Third Party Plaintiff
12 THE CITY OF EUREKA

13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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15 DATED: JUNE 10, 2010

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MAXINE M. CHESNEY
UNITED STATES DISTRICT JUDGE

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